

MAR 18 2022

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN A FEDERAL CUSTODY		US DISTRICT COURT WESTERN DISTRICT OF NC
United States District Court District		
Name (under which you were convicted):	PAUL BURKS	Docket or Case No.: 3:14-cr-00208-MOC-DSC-1
Place of Confinement:	BUTNER, NC USA	Prisoner No.: 29723-058
UNITED STATES OF AMERICA	v.	Movant (include name under which convicted) PAUL BURKS
MOTION		

- (a) Name and location of court which entered the judgment of conviction you are challenging:
U.S. DISTRICT COURT - WESTERN DISTRICT OF NORTH CAROLINA (CHARLOTTE)
- (b) Criminal docket or case number (if you know): 3:14-cr-00208-MOC-DSC-1
- (a) Date of the judgment of conviction (if you know): 7/21/16
(b) Date of sentencing: 2/13/17
- Length of sentence: 176 MONTHS
- Nature of crime (all counts):
 (1) CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD
 (2) MAIL FRAUD
 (3) WIRE FRAUD
 (4) CONSPIRACY TO COMMIT TAX FRAUD
- (a) What was your plea? (Check One)
 (1) Not Guilty ☒ (2) Guilty ☐ (3) Nolo contendere (not contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?
- If you went to trial, what kind of trial did you have? (Check one)
 Jury ☒ Judge Only ☐
- Did you testify at a pretrial hearing, trial, or post-trial hearing?
 Yes ☒ No ☐
- Did you appeal from the judgment of conviction?
 Yes ☒ No ☐
- If you did appeal, answer the following:
 (a) Name of court: UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
 (b) Docket or case number (if you know): 17-4143
 (c) Result: JUDGMENT AFFIRMED
 (d) Date of result (if you know): AUGUST 23, 2018
 (e) Citation to the case (if you know): 746 FED. APPX. 191; 2018 U.S. App. LEXIS 23804
 (f) Grounds Raised: The district court erred by not granting his pretrial

Motion to dismiss the tax fraud conspiracy charge, by denying
his motion for judgment of acquittal as to the tax
fraud, and by prohibiting him from admitting certain
documentary evidence during the government's case in chief.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): UNKNOWN

(2) Result: denied

(3) Date of result (if you know):

UNKNOWN

(4) Citation to the case (if you know): UNKNOWN

(5) Grounds raised: UNKNOWN

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If you answer to Questions 10 was "Yes," give the following information:

- (a) (1) Name of court: U.S. DISTRICT COURT Western District of North Carolina (Charlotte)
(2) Docket or case number (if you know): 3:14-cr-00208-MOC-DSC-1
(3) Date of filing (if you know): 3/12/2020
(4) Nature of the proceeding: EMERGENCY MOTION for Compassionate Release
(5) Grounds raised: Health and co-morbidity COVID-19 ISSUES

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): 8/21/20

(b) If you filed any second motion, petition, or application, give the same information:

- (1) Name of court: U.S. District Court Western District of North Carolina (Charlotte)
(2) Docket of case number (if you know): 314-cr-00208-MOC-DSC-1
(3) Date of filing (if you know): 3/29/21
(4) Nature of the proceeding: SUPPLEMENTAL FILING AFTER REMAND
(5) Grounds raised: UNKNOWN

Result (attach a copy of the court's opinion order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐

(5) If you answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐

(6) If you answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

GROUND TWO: Defendant's conviction was in violation of the fifth and 14th Amendments to the United States Constitution due to defendant being actually and factually innocent of the charges of fraud by means of Ponzi scheme.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See memorandum of Law and Facts (Attachment A)

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why?

Advice of Counsel

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, application? Yes ☐ No ☐
(4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐
(5) If you answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐
(6) If your answer to Question (c)(4) is "Yes," state:
Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____
Date of the court's decision: _____
Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

GROUND THREE:

Defendant's conviction was in violation of the sixth amendment to the United States Constitution
The denial of opportunity to present a complete defense.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See brief of law in support (Attachment A)
See memorandum of law and fact (Attachment A)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒
(2) If you did not raise this issue in your direct appeal, explain why:

Advice of Counsel

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐
- (4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐
- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

GROUND FOUR: Defendant's conviction was in violation of the 6th Amendment to the United States Constitution Guarantee of effective counsel, i.e. ineffective assistance of counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

see Memorandum of Law and Fact (Attachment A)

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Advice of Counsel

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐
- (4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐
- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None of the grounds in this motion have ever been presented in ANY Federal Court, because of Advice of Counsel.

14. Do you have any motion, petition, or appeal not pending (filed and not decided yet) in any court for the judgment you are challenging?

Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing: NOELL P. Tin, Jacob H. Sussman, Melissa Owen
all at 301 E. Park Ave. Charlotte, NC 28203

(b) At the arraignment and plea: same as (a) above

(c) At the trial: same as (a) above

(d) At sentencing: same as (a) above

(e) On appeal: same as (a) above

(f) In any post-conviction proceeding: same as (a) above

(g) On appeal from any ruling against you in a post-conviction proceeding:
same as (a) above

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Defendant's ACTUAL innocence overcomes all
procedural bars.

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) the date of which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Emergency Evidentiary Hearing
or dismissal of the indictment and vacate the conviction

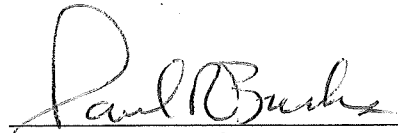
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

MARCH 7, 2022
(month, date, year)

Executed (signed) on MARCH 7, 2022 (date)


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

